

**Charter Ord. 209 Police and Fire Retirement Effect 8/26/2009 031070**  
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**CHARTER ORDINANCE NO. 209**

A CHARTER ORDINANCE OF THE CITY OF WICHITA KANSAS, AMENDING CHARTER ORDINANCE NO. 205 RELATING TO THE POLICE AND FIRE RETIREMENT SYSTEM OF THE CITY OF WICHITA AND REPEALING THE ORIGINAL OF SAID CHARTER ORDINANCE.

WHEREAS, the City of Wichita, Kansas, has created and continued, by various charter ordinances, a retirement system for commissioned officers of the Wichita Police Department and Wichita Fire Department (the "Retirement System"); and,

WHEREAS, since their original adoption, the charter ordinances providing for the creation, modification and continuation of the Retirement System have been from time to time amended, supplemented and/or replaced; and,

WHEREAS, the City of Wichita desires to amend certain provisions of the retirement plans within the Retirement System.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

**SECTION 1**

The City of Wichita, Kansas, a city of the first class, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby continues its election, initially made in Charter Ordinance No. 19 of the City of Wichita, and preserved in subsequent charter ordinances amendatory thereto, to exempt itself from and makes inapplicable to it Section 13-14a01 through and including Section 13-14a14 of the Kansas Statutes Annotated; and further, the City hereby enacts the following sections hereof in substitution of, and as a complete replacement for, all currently existing provisions of Charter Ordinance No. 205 of the City of Wichita.

**SECTION 2**

**Name and Effective Date.**

The Police & Fire Retirement System of Wichita, Kansas, hereinafter referred to as the "Retirement System" is hereby established to provide retirement, survivor, death and other benefits for Police and Fire Officers of the City of Wichita and their dependents, continuing the provisions of the Retirement System, which was established January 1, 1965.

### SECTION 3

#### **Definitions.**

The following words and phrases as used in this ordinance, unless a different meaning is plainly required by the context, shall have the following meanings:

“Act of Duty” means an act performed by a Member within the scope of occupational duties inherently involving special risks not generally assumed by a citizen in the ordinary walks of life, for the purpose of protecting life or property, including any act of heroism as a Member.

“Actuarial Tables” means such tables of mortality and rates of interest as may be adopted by the Board.

“Board” means the Board of Trustees of the Police & Fire Retirement System.

“City” means the municipal government of the City of Wichita, Kansas.

“City Council” means the governing body of the City of Wichita, Kansas.

“Deferral Period” means that period of time between the date a vested employee leaves Service and the date upon which the employee is eligible for and begins to receive a pension benefit.

“Deferred Retiree” means a vested Member who has withdrawn from Service, has not elected to receive a refund of contributions and any applicable interest, and is eligible to receive retirement benefits at a future date.

“Disability” means total inability to perform permanently the duties of the position held by the Member at date of Disability due to a physical or mental incapacity resulting from external force or violence or disease.

“DROP” means the Deferred Retirement Option Plan available to Retirement System Members for a maximum period of five (5) years. The DROP is to be phased in over a three (3) year period starting on January 1, 2000. From January 1, 2000 to December 31, 2000, no Member may utilize the DROP; beginning January 1, 2001 to December 31, 2001, Members may select a backward DROP of up to one (1) year; beginning January 1, 2002 to December 31, 2002, Members may select a backward DROP of up to three (3) years; beginning January 1, 2003, Members may select a backward DROP of up to five (5) years.

“DROP Period” means the number of months between the actual retirement date under the DROP and the Member’s date of Withdrawal from Service.

“Final Average Salary” means the average annual Salary for the three (3) highest consecutive years of Service within the last ten (10) years of Service as a Member, and which shall be computed on the basis of the seventy-eight (78) consecutive pay periods within which the Salary is the highest.

“Fund” means the Police & Fire Retirement Fund as first established by Charter Ordinance No. 5 of the City of Wichita, Kansas.

“Internal Revenue Code” refers to the Internal Revenue Code of 1986 or 1954, as applicable to governmental plans, and regulations promulgated with respect to the Internal Revenue Code.

“Member” means any Police or Fire Officer of the City receiving compensation and contributing to the Police & Fire Retirement System of Wichita.

“Minor Child” or “Minor Children” eligible for consideration under the provisions of the ordinance means children of the blood and adopted children, provided the proceedings for adoption shall have been initiated at least one (1) year prior to the date of death of the Member or Retiree.

“Police or Fire Officer” means, in the case of a Police Officer, any employee of the Police Department of the City holding the rank of Police Officer, including probationary Police Officers or any higher rank; and, in the case of a Fire Officer, any employee of the Fire Department of the City holding the rank of fire fighter, including probationary fire fighter or any higher rank; and in any case, commissioned officers. Effective June 29, 1996, the term “Police or Fire Officer” includes safety officers employed by the Wichita Airport Authority who shall be considered Fire Officers for purposes of electing representatives to the Board. The term “Police or Fire Officer” shall not include: (1) any person privately employed as a Police or Fire Officer; (2) any person temporarily employed as a Police or Fire Officer for an emergency; (3) any civilian employee in the Police or Fire departments; or, (4) any person permanently appointed to the position of Chief of Police under an offer of employment which provides the option of either membership in this Retirement System or the International City Management Association deferred compensation and/or retirement programs, unless such person files in writing a selection of membership in this Retirement System within ninety (90) days of commencing employment, such selection of membership is irrevocable.

“Prior Service” means service rendered by a Member prior to January 1, 1965.

“Regular Interest” means interest at seven percent (7%) per annum, compounded monthly.

“Retiree” means a Police or Fire Officer who is receiving a retirement benefit from the Retirement System.

“Salary” means the base monthly rate of pay being paid in accordance with a Salary ordinance (and shall include longevity pay, educational pay, EMT pay, MICT, acting, Kelly, court appearance, bomb tech pay, flight pay, standby pay, and shift differential in the computation of benefits). Salary in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded.

“Service” means employment with the City as a Police or Fire Officer and those periods of military service, Sick Leave, and/or Disability for which Members are entitled to Service credit under the provisions of this ordinance.

“Service-Connected Disability” means any physical or mental incapacity resulting from external force, violence, or occupational disease occasioned by an Act of Duty as a Police or Fire Officer, imposed by the ordinance or rules and regulations of the City, or any other Disability, which may be directly attributable to the performance of an Act of Duty.

“Service-Connected Disease” shall be applicable to any Member having five (5) years of Service or more, and shall mean any sickness, disease, or illness of the heart, lungs, or respiratory tract of a Member which may be determined to be directly attributable to his or her employment as a Police or Fire Officer, including exposures to heat and extreme cold, inhalation of heavy smoke, fumes or poisonous, toxic or chemical gases, while in the performance of an Act of Duty.

“Sick Leave” shall be defined as part of Service: provided that unused accumulated Sick Leave shall not be used to meet the existing age or Service requirements heretofore established under Plans A, B, and C-79.

“Withdrawal from Service” means complete severance of employment of any Member as an employee of the City by resignation, discharge, or dismissal.

#### SECTION 4

##### **Continuation of Three Plans.**

There are hereby continued in existence Plans A, B, and C-79. Plan A applies to all Police and Fire Officers entering the Service of the City between December 31, 1964 and January 1, 1979. Plan B applies to those Police and Fire Officers with Prior Service who chose to participate in Plan B. Plan C-79 applies to Police and Fire Officers newly employed or re-employed by the City on or after January 1, 1979.

It is the intent that the Police & Fire Retirement System of Wichita, KS plan be established as a qualified governmental pension plan under Section 401(a) and 414(d) of the Internal Revenue Code. Retirement plan assets are to be held in a trust as required under Section 401(a) of the Internal Revenue Code. The Board shall distribute the corpus and income of the retirement plan to the members and their beneficiaries in accordance with the retirement plan’s law. At no time prior to the satisfaction of all liabilities with respect to members and their beneficiaries shall any part of the corpus and income be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries. Upon complete or partial termination of the retirement plan, the rights of members to benefits accrued to the date

of termination, to the extent funded, or to the amounts in their accounts are nonforfeitable, and amounts in their accounts may be distributed to them.

## SECTION 5

### **Membership.**

Membership of the Retirement System shall include:

- (a) Any person becoming a Police or Fire Officer on or after January 1, 1965.
- (b) Any person who was a Police or Fire Officer on December 31, 1964. Any Police or Fire Officer who was temporarily absent on December 31, 1964, due to sickness or Disability, and any such person on an approved leave of absence on said date for any cause, provided such leave shall not have extended for more than one (1) year continuously, except for military service, shall be considered as a Police or Fire Officer on such date.

## SECTION 6

### **Retirement System Funding.**

An annual determination shall be made of the actuarial reserve requirements for the benefits provided herein for the Members and their beneficiaries based upon such Member's current and future Services. In addition to interest income and other income accruing to the Retirement System, these requirements shall be by Member contributions and City contributions as follows:

- (a) From and after August 7, 1999, each Member of Plan A shall contribute eight percent (8%) of Salary earned and accruing after such date, each Member of Plan B shall contribute six percent (6%) of Salary earned and accruing after such date, and each Member of Plan C-79 shall contribute seven percent (7%) of Salary earned and accruing after such date as their share of the cost of the benefits provided herein.

These contributions shall be made in the form of a deduction from Salary.

- (b) The City shall make bi-weekly contributions in an amount, which will be sufficient to provide actuarial reserves for earned benefits and the expenses of plan administration. In the event that Police and Fire Officers are paid other than on a bi-weekly basis, the City shall make such contributions with the same frequency as Police and Fire Officers are paid.
  - (1) To provide for any unfunded accrued liability, the City shall contribute a sum sufficient to amortize such liability over a period of not more than twenty years.

- (2) The amount of City contribution provided in this section shall be established by applying percentage rates of contribution as actuarially determined to the salaries being paid to the Members during each payroll period, and the resulting amounts shall be remitted by the City to the Retirement System concurrently with the payment of the salaries of the Members.
- (3) For the purpose of funding all obligations of the Retirement System under the provisions of this ordinance over and above Member contributions and other income accruing to the Retirement System, as herein provided, the City may levy a tax, which levy shall be in addition to the levies now authorized by law for corporate or other purposes.
- (4) The City shall pick up the employee contribution required by subsection (a) of this section for all Salary earned after the effective date of this subsection. The contributions so picked up shall be treated as employer contributions in determining tax treatment under the Internal Revenue Code. The City shall pick up these employee contributions from funds established and available in the salaries account, which fund would otherwise have been designated as employee contributions and paid to the Retirement System. Employer contributions picked up by the City pursuant to this subsection shall be treated for all other purposes of this and other laws of the City in the same manner and to the same extent as employer contributions made prior to the effective date of this subsection. This subsection is effective for pay periods beginning on and after January 1, 1994.
- (5) Forfeitures may be used to reduce City contributions but should not be used to increase benefits, in compliance with Section 401(a)(8) of the Internal Revenue Code.

## SECTION 7

### **Composition; Expenditures.**

- (a) The Fund shall consist of all moneys received from contributions made by employees, refunds made by employees on re-employment, investments, earnings, and moneys paid into the Fund by the City.
- (b) All benefits paid from the Retirement System shall be distributed in accordance with the requirements of section 401(a)(9) of the Internal Revenue Code and the regulations under that section, as applicable to a governmental plan within the

meaning of Section 414(d) of the Internal Revenue Code. This is being adopted in accordance with Section 823 of the Pension Protection Act of 2006. In order to meet these requirements, the Retirement System shall be administered in accordance with the following provisions:

- (1) Distribution of a Member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the Member attains age 70  $\frac{1}{2}$  or April 1 of the year following the calendar year in which the Member retires. If a Member fails to apply for retirement benefits by the later of either of those dates, the Board shall begin distribution of the monthly benefit as required by this rule in the form provided in Sections 13 or 15;
- (2) The Member's entire interest must be distributed over the Member's life or the lives of the Member and a designated beneficiary, or over a period not extending beyond the life expectancy of the Member or of the Member and a designated beneficiary. The life expectancy of a Member or the Member's spouse may not be recalculated after the benefits commence;
- (3) The Retirement System, pursuant to a qualified domestic relations order, may establish separate benefits for a Member and nonmember;
- (4) If a Member dies before the required distribution of the Member's benefits has begun, the Member's entire interest must be either:
  - (A) distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year immediately following the calendar year in which the Member died; or
  - (B) distributed within five years of the Member's death;
- (5) If a Member dies after the required distribution of benefits has begun, the remaining portion of the Member's interest must be distributed at least as rapidly as under the method of distribution before the Member's death;
- (6) The amount of an annuity paid to a Member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and

the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A 2;

- (7) The death and disability benefits provided by the Retirement System are limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code, and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25% of the cost for all of the Members' benefits received from the Retirement System; and
  - (8) Notwithstanding the other provisions of this rule or the provisions of the Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.
- (c) The Board is authorized to expend funds for the following purposes: clerical and secretarial work, stationery, supplies and printing; and professional services of actuaries, accountants, physicians, and attorneys, the foregoing list not being intended to limit or exclude expenditures for other proper purposes.
  - (d) The Board may not engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.
  - (e) Effective as of July 1, 1989, the Board will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the Board by rule; such benefits will not be subject to employer discretion. The Board rules adopted for this purpose are incorporated into this section as part of the plan document.

## SECTION 8

### **Accounting and Actuarial.**

- (a) The assets of the Retirement System shall be held for the express purposes set forth in the provisions of this ordinance. An adequate system of accounts and records shall be established and maintained.
- (b) An actuarial experience study of the Retirement System shall be made at least once every five (5) years by an actuary engaged by the Board to check demographic and economic assumptions used in the calculations of liabilities and costs. An annual actuarial valuation of the Retirement System shall be made as of December 31st of each year for the purpose of establishing its financial condition and checking its current operating experience.



- (c) Any excess balance in the Retirement System as determined in such valuation shall be applied to reduce the City's rate of contribution in succeeding years. Such contribution adjustments shall be made upon recommendation of the actuary.

## SECTION 9

### **Management-Policy Direction.**

The Retirement System continued and maintained by this ordinance shall be construed to be a trust, separate and distinct from all other entities. The responsibility for the direction and operation of the Retirement System, and for making effective the provisions hereof, is hereby vested in a Board. The Board shall consist of sixteen (16) Members, as follows:

- (a) The City Manager, or an individual appointed by the City Manager (the City Manager's Designee);
- (b) The Chief of the Police Department and the Chief of the Fire Department;
- (c) Seven (7) trustees appointed by the City Council who need not be employees of the City. Trustees appointed by the Council shall be appointed for such terms and shall be subject to such limitation of terms as adopted by ordinance;
- (d) Three (3) Police Officers and three (3) Fire Officers, each having at least five (5) years of Service, who shall be Members of the Retirement System and shall be elected by the Members from the respective occupational groups according to rules of election to be adopted by the Board. Elected trustees shall serve four-year terms expiring on December 31st of the fourth year following their election;
- (e) The City Manager's designee shall serve a two (2) year term ending on August 31st of the second year following appointment;
- (f) An elected or appointed trustee shall continue in office until the trustee's successor is elected or appointed, and has qualified. Any elected trustee shall be disqualified to serve in that capacity upon termination of Service with the City. If a vacancy occurs in the office of elected trustees, a successor shall be elected for the unexpired term of office within thirty (30) days by a special election, unless the regular bi-annual election occurs sooner. If a vacancy occurs in the office of an appointive trustee, such vacancy shall be filled for the unexpired term in the same manner as the office was previously filled;
- (g) Each trustee shall take an oath that, so far as it devolves upon the trustee, the trustee will diligently and honestly administer the affairs of the Board, and that the trustee will not knowingly or willfully permit to be violated any of the

provisions of the ordinances applicable to the Retirement System. Such oath shall be subscribed by the trustee making it, and certified by the officer before whom it is taken, and immediately filed with the City Clerk. A trustee shall be deemed to have qualified for membership on the Board when such oath shall have been filed;

- (h) Subject to the limitations prescribed herein, the Board shall from time to time establish rules and regulations for the administration of the Retirement System and to implement the provisions of this ordinance as may be required. It shall hold regular meetings at least quarterly in each year and such special meetings as may be deemed necessary. The annual meeting shall be held in the month of January of each year. All meetings shall be open to the public. A record of proceedings of all meetings shall be kept by the Board;
- (i) Each trustee shall be entitled to one (1) vote on the Board, and the concurrence of a majority vote of the trustees present at the meeting shall be necessary; provided, however, that in all matters relating to: (1) changes in the ordinances requiring City Council action; (2) Disability applications; (3) hiring or dismissal of consultants; and (4) alteration of the Investment Committee's recommendations for investment advisor, actuary, asset allocation plan and investment policy, at least nine (9) affirmative votes shall be required for passage; and
- (j) A trustee shall receive no Salary while serving in that capacity, provided, however, that Police and Fire Officers elected to the Board shall be permitted to receive their regular Salary from the City of Wichita.

## SECTION 10

### **Officers and Their Duties.**

The Board shall have the following officers, whose duties shall be prescribed by the by-laws to be adopted by the Board:

- (a) A President, a First Vice President, and a Second Vice President shall be elected from among its trustees.
- (b) The Administrator of the Retirement System shall be the Pension Manager who is appointed to such position by the City Manager.
- (c) The City Treasurer, ex-officio, shall be treasurer of the Retirement System.
- (d) The City Attorney, ex-officio, shall be legal counsel to the Board, and shall represent the Board in all litigation affecting the Retirement System.

- (e) An actuary shall be appointed to serve as technical advisor in the administration of the Retirement System on matters pertaining to the technical and actuarial aspects thereof.
- (f) A specializing physician or physicians shall be appointed at the discretion of the Board to pass upon claims for Service-Connected and non-Service Connected Disability benefits, on medical questions pertaining to such claims, and on any other matters requiring medical advice that may arise in administration of the Retirement System.

## SECTION 11

### **Administration.**

Subject to the direction of the Board, the Administrator of the Retirement System shall:

- (a) Employ such clerical and professional services as may be required for the proper operation of the Retirement System, whose compensation shall be fixed by the City Council;
- (b) Establish and maintain records, files, and accounts in such form and scope as will give effect to the requirements of the Retirement System in accordance with the provisions hereof;
- (c) Accumulate actuarial data concerning the operating experience of the Retirement System in such form as is necessary for the annual actuarial valuations and periodic actuarial studies in accordance with the recommendations of the actuary;
- (d) Prepare periodic reports as may be required for the efficient administration of the Retirement System;
- (e) The Administrator shall also prepare each year the annual report of the Board, to be submitted to the City Council embodying, among other things, a statement of assets, liabilities and reserves certified by the actuary, an accountant's balance sheet supported by a statement of income and expenditures, a listing of investments owned by the Retirement System, a detailed statement of investments acquired and disposed of during the year covered by the report, and such other financial and statistical data as may be deemed necessary for a proper interpretation of the condition of the Retirement System and the results of its operations. The Board shall cause to be distributed among the Members of the Retirement System a synopsis of such annual report.

## SECTION 12

**Investments.**

- (a) The Board shall invest and reinvest any portion of the Fund not needed for immediate benefit payments through a joint investment fund comprised of assets of the Wichita Employees' and Police & Fire Retirement Systems. The joint investment fund shall be overseen by an investment committee comprised of trustee representatives elected from both Boards and a City Manager's designee. The administrator shall be an ex-officio, non-voting Member of the investment committee.
- (b) To achieve the investment objective of making the Fund as productive as possible, the following standards and limitations are set forth:
  - (1) In investing and reinvesting monies in the Fund and in acquiring, retaining, managing, and disposing of investments of the Fund, there shall be exercised the judgment and care under the circumstances then prevailing which people of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard and subject to the following requirements, there may be acquired, retained, managed, and disposed of as investments of the Fund every kind of investment which people of prudence, discretion, and intelligence acquire, retain, manage, and dispose of for their own account;
  - (2) The proportion of the funds invested in corporate preferred and common stocks shall not exceed seventy percent (70%);
  - (3) Investments may be made in any pooled arrangement such as a mutual fund, separate account, or commingled fund operated by a qualified investment counselor, an insurance company, or a bank;
  - (4) Investments managed by in-house staff will be restricted to high-grade marketable fixed income securities;
  - (5) Other investments separately managed by a qualified investment counselor, an insurance company, or a bank, who represent that they act as a fiduciary, will be handled similarly to most other clients of the managing firm, except for holdings of money market instruments or their equivalent;

- (6) The Board shall impose whatever limitations are deemed appropriate under its investment policy statement;
  - (7) The proportion of the Fund invested in securities of a corporation organized under the laws of a country other than the United States of America and securities issued by a foreign country or political subdivision thereof shall not exceed a total of twenty-five percent (25%).
- (c) Nothing in this ordinance, however, shall be construed so as to give the Board at any time authority to invest directly or indirectly in any:
  - (1) Real estate; except in pooled arrangements such as a mutual fund, separate account or commingled fund operated by a qualified investment counselor or an insurance company. The amount of such investment shall not exceed ten percent (10%) of the Fund;
  - (2) Private equity; except in a commingled fund-of-funds vehicle operated by a registered investment advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;
  - (3) Mortgages secured by real estate, except insured mortgages under Titles 203, 207, 220 and 221 of the Federal Housing Act;
  - (4) Oil and gas leases or royalties; or
  - (5) Commodities (including but not limited to wheat, gold, gasoline, options, or financial futures);
  - (6) Provided, however, that the restrictions on investments set forth above shall not apply to funds which are invested in a mutual fund, separate account, or commingled fund operated by a qualified investment counselor or insurance company for the purpose of making international investments.
- (d) The Board shall have the power to hold, purchase, sell, assign, transfer, and dispose of any of the securities in which monies of the Retirement System have been invested, as well as the proceeds from such investments, and any other property belonging to the Retirement System.
- (e) All investments shall be clearly marked to indicate ownership of the Retirement System, and to the extent possible, shall be registered in its name. No securities shall be purchased or sold, or in any manner hypothecated, except by action of the Board duly entered in the record of its proceedings.

- (f) Any limitations affecting the purchase of securities shall be applicable only at the time of purchase and shall not require the liquidation of an investment at any time.
- (g) No trustee or employee of the Board shall have any direct interest in the income or gains from any investment made by the Board, nor shall any such person receive any pay or emolument for services in connection with any investment. No trustee or employee of the Board shall become an endorser or surety, or in any manner an obligor for money loaned or borrowed from the Retirement System. Proof that any such person has violated any of these restrictions shall make him guilty of a misdemeanor or larceny, as the case may be, and such person shall be punishable therefore as provided by law.

## SECTION 13

### **Distribution of Contributions.**

- (a) Any Member withdrawing from Service prior to retirement shall be entitled to a distribution, in a single sum, of the Member's accumulated contributions. Those Members withdrawing from Service after December 31, 1999 shall receive interest at the rate of five percent (5%) per year on such contributions, which shall be credited to accumulated contributions as of the last day of December of each year beginning with the year 1999 through the year 2006. Beginning January 31, 2007 interest shall be credited monthly to accumulated contributions at the rate of five percent (5%) per year, compounded monthly. No interest shall be allowed in any case in which the contributions, and any prior interest earned, were in the fund for any period following termination. The payment of a distribution under the provisions of this section shall automatically effect a waiver and forfeiture of all of such Member's accrued rights and benefits in the Retirement System. The Board may, in its sole discretion, withhold payment of a distribution for a period of not to exceed ninety (90) days after receipt of a written request for the same.
- (b) Any Member who has received such distribution shall be considered a new Member under Plan C-79 upon re-employment provided that if such Member shall render at least three (3) years of Service following such Member's latest re-employment, such Member shall be entitled to regain his or her previously forfeited Service credits upon repayment of all amounts received as refunds, including Regular Interest from date of refund to date of repayment. The time

and manner of making such repayments shall be fixed by the Board. Any Member who terminates employment and leaves the Member's contributions in the Retirement System, if rehired, shall be classified as a Member under Plan C-79.

- (c) Upon death of a Member leaving no survivors eligible for a benefit from the Retirement System, such Member's accumulated contributions plus interest, if applicable, shall be paid in a single sum to such person or persons as the member shall have nominated by written designation duly executed and filed with the Board. If no such designation shall have been made, payment shall be made to the Member's legal representative.
- (d) After termination of all benefit payments to the Member, surviving spouse, and/or Minor Children, a distribution shall be made to the designated beneficiary or legal representative of the Member, surviving spouse, or Minor Children consisting of the excess, if any, of the Member's accumulated contributions, together with interest thereon if applicable, over all such benefit payments made by the Retirement System to or for the benefit of the Member.
- (e) Optional direct transfer of eligible rollover distribution shall be as required under Section 401(a)(31) of the Internal Revenue Code.

#### SECTION 14

##### **Eligibility for Service Retirement; Indexing Deferred Benefits.**

- (a) Under Plan A or Plan B, any Member having at least twenty (20) years of Service may retire and receive a Service retirement benefit.
- (b) Under Plan C-79, all Police and Fire Officers employed on or after January 1, 1979, having at least twenty (20) years of Service, and having attained age fifty (50), may retire on a Service retirement benefit; provided, that from and after January 1, 1979, any Member who has completed thirty (30) years of Service shall be eligible to receive, regardless of age, a retirement benefit, computed in accordance with a Service retirement benefit.
- (c) A Member under Plan C-79 having at least twenty (20) years of Service may retire prior to the attainment of age fifty (50) by leaving active Service as a Police or Fire Officer of the City; leaving the Member's contributions in the Retirement Fund; and deferring the payment of the Member's retirement benefits until the Member has attained age fifty (50). If such Member has a Deferral Period of at

least one (1) full month, such Member shall be entitled to a retirement benefit calculated as follows:

- (1) A base retirement benefit calculated under Section 15 and
  - (2) A benefit (which may calculate as no actual increase in benefits), which shall be calculated for each calendar year or full months, in the case of a partial year in such Member's Deferral Period.
  - (3) The benefit calculation in subparagraph (2) shall be the base benefit calculation in subparagraph (1) adjusted annually for each calendar year or full months in the Member's Deferral Period. The determination of whether a Member is due a benefit increase for a specific calendar year in which the Member has at least one (1) full month of Deferral Period shall be made by determining, for that calendar year, the smaller of (1) 1.055; or (2) the ratio of national average earnings for the second preceding calendar year to national average earnings for the third preceding calendar year. If the smaller of these two amounts is greater than 1.0, the Member shall be entitled to a benefit increase for that calendar year equal to the Member's base retirement benefit, as calculated under subparagraph (1), multiplied by such smaller amount. Any benefit increase for a partial year in the Member's Deferral Period shall be pro-rated for each month, based on the full year increase.
- (d) A Member under Plan C-79 with at least ten (10) years of Service may withdraw from Service and elect to leave such Member's contributions in the Retirement System until such time as such Member is eligible to receive a retirement benefit. If such Member has a Deferral Period of at least one (1) full month, such Member shall be entitled to a retirement benefit calculated as provided for above.

## SECTION 15

### **Calculation of Retirement Benefit.**

- (a) Any Member in Plan A or Plan B having twenty (20) years or more of Service may make application to be retired, and if such application is made, the Board shall retire such Member and shall pay such Member a monthly benefit in an amount equal to fifty percent (50%) of such Member's Final Average Salary at date of his or her retirement, plus an additional two and one-half percent (2.50%) per year for each year above twenty (20) years up to a maximum of seventy-five percent



(75%) of Final Average Salary. For purposes of computing a retirement benefit, unused Sick Leave will be added to Service so long as the computed benefit does not exceed seventy-five percent (75%) of Final Average Salary. The accumulated, unused Sick Leave shall not be used to meet the twenty (20) year Service requirement. A fractional period of Service of less than a full year shall be considered in the calculation of the benefit.

- (b) Any Member in Plan C-79 having twenty (20) years or more of Service and who has attained the age of fifty (50) years may make application to be retired, and if such application is made, the Board shall retire such Member and shall pay such Member a monthly benefit in an amount equal to fifty percent (50%) of such Member's Final Average Salary at date of retirement, plus an additional two and one-half percent (2.50%) per year for each year above twenty (20) years up to a maximum of seventy-five percent (75%) of Final Average Salary. For purposes of computing the retirement benefit, unused Sick Leave will be added to Service so long as the computed benefit does not exceed seventy-five percent (75%) of Final Average Salary. The accumulated, unused Sick Leave shall not be used to meet the twenty (20) year Service requirement. A fractional period of Service of less than a full year shall be considered in the calculation of the benefit.
- (c) Any Member having ten (10) years and less than twenty (20) years of Service may become a Deferred Retiree by electing to leave such Member's contributions and interest, if any, in the Retirement System. If such Member leaves the Member's contributions and interest in the Retirement System until the Member reaches age fifty-five (55) years, the Member shall be entitled to a retirement benefit as calculated in Section 14(d) herein.

(Such benefit shall be calculated by multiplying the Member's years of Service by an amount equal to two and one-half percent (2.50%) and multiplying that product by the Member's Final Average Salary.) Upon retirement and commencement of the receipt of the retirement benefit, such Member shall not be entitled to any survivor's benefits.

**Military Service.**

- (a) Notwithstanding any provisions of this plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.
- (b) Effective with respect to deaths occurring on or after January 1, 2007, while a Member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a Member in a State or local retirement or pension system, are entitled to any additional benefits that the system would provide if the Member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the Member's death while employed.
- (c) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(2) of the Internal Revenue Code, a Member receiving differential wage payments (while the Member is performing qualified military service (as defined in chapter 43 of title 38, United States Code)) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated Members in a reasonably equivalent manner.

**SECTION 17****Monthly Payments.**

Any benefit hereunder shall be payable in monthly installments.

**SECTION 18****Optional Annuity.**

An optional annuity, as herein provided, means a benefit computed according to the approximate equivalent formula recommended by the actuary and adopted by the Board, payable during the lifetime of the specified beneficiary only if such beneficiary survives the Retiree who was receiving a reduced Service retirement annuity. If the specified beneficiary predeceases the Retiree, the Retiree's reduced Service retirement annuity shall revert to the Service retirement annuity calculated for the Member had the Member not selected the optional annuity. This recalculated Service retirement annuity shall be payable beginning the first of the month following notice of the beneficiary's death.

The amount of the optional annuity shall be that specified in the Member's notice of election, and shall not, in any event, be more than the amount of the Member's reduced Service retirement annuity.

The optional annuity shall begin on the day following the death of the Retiree.

## SECTION 19

### **Permanent Service-Connected Disability Benefits.**

Any Member, who shall, while engaged in the performance of his or her duties, be permanently injured or disabled, other than as the result of an occupational disease, and upon an examination by a physician or physicians appointed by the Board of Trustees, be found to be physically or mentally disabled as a result of such permanent Disability or injury so as to render him incapable to perform the duties of the position held by the Member at date of Disability, shall be entitled to be retired, and the Board of Trustees shall thereupon order such Member's retirement and upon being retired, the Member shall be paid a benefit equal to seventy-five percent (75%) of the Salary in effect on the date when Salary payments ceased. The benefit shall be established according to the charter ordinance that is in effect at the time Salary payments ceased.

Any Police or Fire Officer incurring an occupational disease due to service-connected causes, who upon examination by a physician or physicians appointed by the Board is found by at least two (2) out of three (3) such physicians to be physically or mentally disabled as the direct result and proximate cause of such disease so as to render him incapable to perform the duties of the position held by the Member at date of Disability, shall be entitled to be retired at a benefit equal to fifty percent (50%) of his or her Salary in effect upon the date when Salary payments ceased. The benefit shall be established according to the charter ordinance that is in effect at the time Salary payments ceased.

The Board of Trustees may, when they deem it advisable, call back for re-examination by a physician, any Member retired by reason of permanent Disability under the provisions of this ordinance, and if said examination discloses that said Member is then able to perform his or her duties in said department, he or she may be returned to Service; and if said Member, upon request, fails or refuses to return to duty, then all payments from said System shall cease.

The Disability benefit shall be recomputed when the Member attains age fifty-five (55). At such time the Member attains age fifty-five (55), the Disability benefit shall be recomputed in the same manner as a Service retirement benefit which would have been received had the Member been continuously in Service in the grade occupied at date absence on account of Disability began, subject to periodic Salary changes in such grade. In such a case, Service credit shall be granted during the period of payment of the Disability benefit, prior to attainment of age fifty-five (55), toward the recomputed Disability benefit.

## SECTION 20

### **Non-Service Connected Disability.**

Any Member having at least seven (7) years of credited Service, under the age of fifty-five (55) years, who becomes totally and permanently disabled due to any cause other than Service-Connected Disability, while an employee of the City, shall be entitled to a Non-Service Connected Disability benefit. The benefit shall be equal to thirty percent (30%) of the Final Average Salary plus one (1) percentage point for each year of Service above seven (7) years, up to a maximum of fifty percent (50%) of Final Average Salary. Accumulated unused Sick Leave will be added to Service so long as the computed benefit does not exceed fifty percent (50%) of Final Average Salary. The benefit shall be reduced by any amounts received by the Member from public funds as Salary, or other forms of compensation during Disability, exclusive of payments under Federal Social Security.

Non-Service Connected Disability shall be considered total and permanent if it results in some impairment of mind or body due to mental or physical incapacity resulting from external force, or violence, or disease that substantially precludes a Member from performing with reasonable regularity the substantial and material parts of any gainful work or occupation that the Member would be competent to perform were it not for the fact that the impairment is founded upon conditions which render it reasonably certain that it will continue indefinitely.

The benefit shall be payable during continuing Disability of the Member, but the Member shall be subject to periodic medical examinations as herein provided.

Should a Member recover from Disability and re-enter the Service of the City as a Police or Fire Officer, and shall render at least three (3) years of Service thereafter, the Member shall be credited for Service retirement benefit purposes with the periods of time during which the Member shall have received a Non-Service Connected Disability benefit; otherwise, such Member re-entering Service shall not be entitled to Service credit for the periods of such Disability.

Disability incurred while in military service shall not be considered for benefits under the provisions of this ordinance.

A Non-Service Connected Disability shall begin to accrue upon commencement of Disability, provided that if the Member is receiving Salary, the benefit shall begin to accrue from the date Salary has ceased. If written application for the benefit shall not have been filed with the Board prior to the expiration of ninety (90) days from date of Disability, the benefit shall begin to accrue from the date application therefore has been filed, but in no event prior to the time when payments to the Member on account of Salary have ceased.

## SECTION 21

**Administration of Disability Annuities.**

- (a) The determination of Disability from any cause shall be made upon the basis of reports of examinations made by at least two (2) physicians designated by the Board.
- (b) A Member receiving service-connected or non-Service Connected Disability benefits shall be required, at the discretion by the Board of Trustees, to submit to an examination at least once each year by a physician or physicians designated by the Board to establish that the Member is incapacitated for active Service as a Police or Fire Officer and is entitled to continue to receive a Disability benefit. The Board may terminate a Disability benefit upon evidence that the Member is no longer disabled for Service. If such termination occurs and the Member does not re-enter the Service, he or she shall be entitled to a refund of the excess, if any, of the contributions made by the Member, without interest, over the amounts received by the Member on the Disability benefit.

If medical examination or an investigation made by the Board discloses that the Member is engaged in or is able to engage in any gainful occupation resulting in earnings for services rendered in any capacity, payment of the Disability benefit shall be reduced to an amount which, when added to the Member's income from such gainful occupation, does not exceed the rate of Salary currently being paid for the rank similar to that held by the Member at commencement of Disability.

- (c) Each Member in receipt of a Disability benefit shall submit to the Board at least once each year, an authenticated copy or duplicate original of the Member's complete United States Income Tax Return, being a statement of income from gainful occupation for the preceding twelve (12) months. Any adjustment in benefit payments, as aforesaid, shall be based upon such statement of income.
- (d) Should any Member receiving a Disability benefit refuse to submit to a medical examination or supply the Board with required statements of income, as herein above provided, benefit payments by the Retirement System shall be discontinued until compliance with the provisions hereof. Should such refusal continue for one (1) year, all rights of the Member to any Disability benefit shall be revoked by the Board. Upon finding that a Member receiving a Disability benefit has deliberately falsified information contained in his or her statement of income, all rights of the Member in any Disability benefit shall be revoked by the Board.

## SECTION 22

### **Backward Deferred Retirement Option Plan (DROP).**

- (a) Any Member eligible to retire on or after January 1, 2001 may, at the time of applying for retirement benefits, elect a backward DROP benefit with payment as provided herein. A Member electing a backward DROP must select an effective backward DROP date. The Member must be eligible to receive a Service retirement benefit on the effective backward DROP date.
- (b) The maximum allowable DROP Period for a backward DROP is sixty (60) months. The DROP Period is the period between the Member's effective backward DROP date and the date of the Member's Withdrawal from Service.
- (c) For purposes of benefit calculations, the Member's retirement date will be the effective backward DROP date.
- (d) A Member's unused Sick Leave credit at the Member's date of election of the backward DROP may be added to the Member's Service at the Member's effective backward DROP date.
- (e) The Member's monthly retirement benefit is calculated as of the Member's effective backward DROP date and is payable at the Member's Withdrawal from Service.
- (f) The Member's DROP benefit is calculated by:
  - (1) multiplying the Member's monthly retirement benefit from (e), times the number of months selected by the Member as the backward DROP Period;
  - (2) plus any applicable post-retirement adjustments;
  - (3) plus interest at an annual rate of five percent (5%) compounded monthly.
- (g) Application for withdrawal of the DROP account balance shall be made within ninety (90) days of the Member's Withdrawal from Service. Payment of the amount calculated in (f) shall be made only in a lump sum payment, a direct rollover, or some combination of the two.

## SECTION 23

### **Service-Connected Death.**

- (a) Upon death of a Member, regardless of the Member's age or length of Service, resulting directly from service-connected causes; or an occupational disease if the Member had at least five (5) years of Service, and in the case of an occupational disease if death occurred within three (3) years from the date of commencement of the disease and the cessation of Salary payments to the Member, whichever is later, a surviving spouse shall be entitled to a benefit equal to fifty percent (50%) of the Member's final Salary at the date of the Member's death. This benefit payable to a surviving spouse hereunder shall be payable during such surviving spouse's lifetime.
- (b) If such Member is also survived by a Minor Child or Minor Children, each such child shall be entitled to a benefit of ten percent (10%) of such Member's final Salary. Such benefit shall be paid to the custodial parent or guardian/conservator of each such child. The combined payments to a surviving spouse and Minor Children shall in no event exceed seventy-five percent (75%) of such Member's final Salary. In the event that the combined payments do exceed such amount, the benefit of the surviving spouse shall be reduced so that combined payments equal seventy-five percent (75%) of such Member's final Salary. At the time that combined payments no longer exceed such amount, the benefit of the surviving spouse shall be increased so that combined payments equal seventy-five percent (75%) of such Member's final Salary, but in no event shall the benefit of the surviving spouse be an amount greater than fifty percent (50%) of such Member's final Salary.
- (c) If such Member dies leaving no surviving spouse, each Minor Child of such Member then surviving shall be entitled to a benefit of twenty percent (20%) of such Member's final Salary. Such benefit shall be paid to the custodial parent or guardian/conservator of each child. The combined payments on account of such Minor Children shall not exceed sixty percent (60%) of such Member's final Salary. In the event that combined payments exceed such amount, the benefits for such children shall be reduced pro rata so that total payments equal sixty percent (60%) of such Member's final Salary.
- (d) Benefits paid on account of Minor Children shall terminate upon the first to occur of the following:
  - (1) The Minor Child reaching the age of eighteen (18) years;
  - (2) Death of the Minor Child; or
  - (3) Marriage of the Minor Child.
- (e) The determination of whether death is Service-Connected or not shall be made in the manner provided for in the administration of Disability benefits.

## SECTION 24

### **Non-Service Connected Death.**

- (a) Upon death of a Member who has at least three (3) years of Service:
  - (1) whose death is not due to Service-Connected causes; or
  - (2) who is on Sick Leave receiving Salary on the date of death and whose death is not due to Service-Connected causes; or
  - (3) who is on approved leave of absence extending not more than twelve (12) continuous months on the date of death and whose death is not due to Service-Connected causes,

the surviving spouse of such Member shall be eligible to receive a benefit if such surviving spouse was the lawfully wedded spouse at the time of the death of such Member. Such surviving spouse shall continue to be eligible to receive a benefit for such spouse's lifetime. The amount of such benefit shall be as calculated in subparagraph (c) below and shall be subject to adjustment as provided in subparagraph (e) below.

- (b) Upon death of a Retiree:
  - (1) who is receiving Service or Non-Service Connected Disability pension benefits on the date of death; or
  - (2) who is receiving a Service retirement benefit or is a Deferred Retiree and has at least twenty (20) years of Service at the date of death,

the surviving spouse of such Retiree shall be eligible to receive a benefit if i) such surviving spouse was the lawfully wedded spouse of such Retiree on the date such Retiree retired or began receiving either a Service or Non-Service Connected Disability pension benefit, and ii) such surviving spouse is at least forty (40) years of age at the time of the death of such Retiree, or if less than forty (40) years of age has, at the time of death of such Retiree, the care and custody of a Minor Child or Children of such Retiree. A surviving spouse who is not eligible to receive a benefit because such surviving spouse is less than forty (40) years of age shall become eligible to receive a benefit on the date that such surviving spouse attains the age of forty (40) years, so long as such surviving spouse has not remarried. A surviving spouse who is eligible to receive a benefit shall continue to receive a benefit for such spouse's lifetime so long as such



surviving spouse does not remarry after the date such Retiree dies and prior to such surviving spouse attaining the age of forty (40) years. The amount of such benefit shall be calculated as provided in subparagraph (c) below and shall be subject to adjustment as provided in subparagraph (e) below.

- (c) Subject to adjustment because of the requirements of subparagraph (e) below, the benefit to be paid to a surviving spouse who is eligible to receive such a benefit under either paragraph (a) or (b) above, shall be equal to thirty-five percent (35%) of such Member or Retiree's Final Average Salary, increased by one percentage point for each year of Service greater than three (3) years, up to a maximum benefit of fifty percent (50%) of Final Average Salary. Provided, however, for a Member or Retiree under Plan B, such benefit shall be equal to fifty percent (50%) of such Member or Retiree's final Salary.
- (d) If a Member or Retiree dies under circumstances set out in subsection (a) or (b) above, each surviving Minor Child of such Member or Retiree shall be entitled to a benefit as calculated herein and subject to adjustment because of the requirements of subparagraph (e) below. The amount of such benefit, if a benefit is also being paid to a surviving spouse of such Member or Retiree, shall be ten percent (10%) of such Member or Retiree's Final Average Salary. The amount of such benefit, if no benefit is being paid to a surviving spouse of such Member or Retiree, shall be fifteen percent (15%) of such Member or Retiree's Final Average Salary. The benefit for a Minor Child shall be paid to the custodial parent or conservator of each such Minor Child. When a Minor Child is receiving a ten percent (10%) benefit and the benefit being paid to a surviving spouse of the Member or Retiree on account of whose death each benefit was initially paid is terminated, the benefit to be paid to such Minor Child shall increase to fifteen percent (15%) of such Member or Retiree's Final Average Salary.
- (e)
  - (1) The combined monthly benefit payment to a surviving spouse and Minor Children shall not exceed sixty-six and two-thirds percent (66 2/3%) of the Final Average Salary of the Member or Retiree on account of whose death the benefits are being paid. In the event that the calculation of such benefit results in such combined monthly benefit payment in excess of that amount, the benefit of the surviving spouse shall be reduced so that the combined monthly benefit payment equals sixty-six and two-thirds percent (66 2/3%) of such Member or Retiree's

Final Average Salary. The benefit for such surviving spouse shall be increased at such time as the combined monthly benefit payment no longer exceeds such sixty-six and two-thirds percent (66 2/3%) limit, but in no event shall such increase result in such surviving spouse's benefit exceeding the amount originally calculated under subsection (c). When no benefit is being paid to a surviving spouse because the benefit calculated for the surviving spouse has been reduced to zero because of the adjustment set out above, any adjustment to the benefits paid to Minor Children because the combined monthly benefit payments exceed sixty-six and two-thirds percent (66 2/3%) of such Member or Retiree's Final Average Salary shall be made pro rata among such Member or Retiree's Minor Children, and such adjustment shall continue until the combined monthly benefit payment can be paid to eligible Minor Children without exceeding such sixty-six and two-thirds percent (66 2/3%) limit.

- (2) The combined monthly benefit payment to Minor Children where there is no benefit being paid to a surviving spouse because no surviving spouse is eligible for such a benefit shall not exceed fifty percent (50%) of the Final Average Salary of the Member or Retiree on account of whose death the benefits are being paid. In the event that combined monthly payments exceed such amount, the benefit of each such Minor Child shall be reduced pro rata so that combined monthly payments equal fifty percent (50%) of such Member or Retiree's Final Average Salary. In no event shall the benefit paid a Minor Child exceed fifteen percent (15%).
- (3) The combined monthly benefit payment to a surviving spouse and Minor Children or to Minor Children shall not exceed the amount of the monthly Service retirement or Disability retirement benefit being paid on the date of the death of the Retiree on account of whose death such benefit payments are being made. In the event that the calculation of such benefit results in a combined monthly benefit payment in excess of such amount, i) the benefit of the surviving spouse shall be reduced so that the combined monthly benefit payment equals such Service retirement or Disability retirement benefit; or ii) if no benefit payment is being paid to a surviving spouse, the benefits of all Minor Children shall be reduced pro rata so that the combined monthly benefit payment

equals such Service retirement or Disability retirement benefit. Once reduced, these benefit payments shall be increased in the same manner and subject to the same limitations as set forth in (e) (1) and (e) (2) above.

- (f) Benefit payments for a Minor Child shall terminate upon such child reaching eighteen (18) years of age, the death of such child, or the marriage of such child, whichever shall occur first.
- (g) The surviving spouse of a Retiree who retired on or after January 1, 2000 and thereafter dies under circumstances set out in subsections (b)(1) or (b)(2) above, shall not be limited by either the age requirement or the remarriage limitations set forth in subparagraph (b) herein. Provided, however that such surviving spouse, in order to be eligible to receive a benefit, shall have been such Retiree's lawfully wedded spouse for at least twelve (12) months immediately preceding the death of such Retiree.
- (h) A Member who, on or after January 1, 2000, selects an effective backward DROP date which is prior to January 1, 2000, shall nevertheless be considered to have retired on or after January 1, 2000 for the purposes of determining the eligibility of such Member's surviving spouse for a benefit.
- (i) For a Member or Retiree under Plan B, benefit payments on account of Minor Children shall be paid only if such Member or Retiree dies leaving no surviving spouse or dies leaving a surviving spouse who remarries prior to age forty (40). Under either such circumstance, the Minor Children of such Member or Retiree shall share equally a benefit equal to fifty percent (50%) of such Member or Retiree's final Salary.

## SECTION 25

### **Post Retirement Adjustments.**

For all Members retiring for any reason from and after February 1, 1974, upon completion of thirty-six (36) months of retirement, the monthly retirement benefits payable to such Retiree, or the monthly retirement benefits payable to the spouse or the Minor Child or Children of such Retiree, shall be increased two percent (2%) per year based on the original benefit, not compounded.

## SECTION 26

### **Funeral Benefit.**

The designated beneficiary of a Member who retired after November 21, 1973 under either Plan A, Plan B, or Plan C-79 shall be paid a funeral benefit of seven hundred fifty dollars (\$750.00).

#### SECTION 27

##### **Assignments Prohibited.**

The right to a refund or a service retirement, Disability, death, or any benefit under the provisions of this ordinance, whatever name called, is personal with the recipient thereof, and the assignment or transfer of any such benefit, or any part thereof shall be void, except as may be provided herein. Any such refund or benefit shall not answer for debts contracted by the person receiving the same, and it is the intention of this ordinance that they shall not be subject to execution, attachment, garnishment, or affected by any judicial proceedings, except such benefit or any accumulated contributions due and owing from the System to any recipient are subject to claims of an alternate payee under a "qualified domestic relations order".

#### SECTION 28

##### **Qualified Domestic Relations Orders.**

As used in this section, the terms "alternate payee" and "qualified domestic relations order" shall have the meaning ascribed to them in section 414(p) of the Internal Revenue Code. The City of Wichita shall not be a party to any action under Article 10 of Chapter 60 of the Kansas Statutes Annotated but is subject to orders from such actions issued by the district court of the county where such action was filed and may also accept orders which it deems to be qualified under this section from courts having jurisdiction of such actions outside the State of Kansas. Orders from such actions shall specify either a specific amount or specific percentage of the amount of the benefit or any accumulated contributions due and owing from the Fund and to be distributed to the alternate payee. The order must contain the following information:

- (a) Name, address, and social security number of the employee and alternate payee;
- (b) Clearly identifies the appropriate Police & Fire Retirement System and plan;
- (c) Creates or recognizes the existence of an alternate payee's rights to, or assigns to an alternate payee the right to receive a portion of the benefits otherwise payable to the employee;
- (d) The date of marriage and divorce/separation;
- (e) Statement that the benefit is payable only at the time of retirement of the employee or at the time the employee withdraws from Service, if the employee withdraws his or her contributions from the Fund;

- (f) That the benefit is payable only during the lifetime of the retired employee or alternate payee should the alternate payee predecease the employee;
- (g) Payment to the alternate payee shall be a lump sum if payment to the employee is lump sum, monthly if payment to the employee is monthly; and
- (h) An employee who elects to participate in the DROP shall be treated as having retired for the purposes of a qualified domestic relations order.

The order to be qualified cannot allow the calculation of the lump sum payment or monthly benefit to be calculated in a manner which results in a payment or benefit in excess of the limits of the plan; cannot allow the alternate payee to be named as a surviving spouse or a survivor at the death of the retired employee; and cannot allow the alternate payee to name a beneficiary.

## SECTION 29

### **Current Retiree Benefit Catch-Up Provision.**

For Retirees who have been receiving a Service or Disability retirement benefit for ten (10) years or more as of January 1, 2000, and for the surviving spouses of deceased Retirees who retired and began receiving a Service or Disability retirement benefit prior to January 1, 1990, the pension benefit payable to such Retirees and such surviving spouses shall be increased by a factor of two percent (2%) per year for each year since such Retiree or the deceased Retiree began receiving a Service retirement benefit. This increase is a one-time benefit adjustment. This increase shall be applied to both the base pension benefit and any post-retirement adjustment, combined. The increased pension benefit calculated under this section shall in no event exceed \$8,183.00 annually.

## SECTION 30

### **Special Provisions for Safety Officers Employed by the Wichita Airport Authority.**

Safety officers employed by the Wichita Airport Authority of the City of Wichita on June 29, 1996 shall be transferred on that date from the Wichita Employees' Retirement Plans to the Police and Fire Retirement System's Plan C-79. Notwithstanding provisions of any other sections contained herein, the following provisions shall be applicable for such safety officers transferred as of June 29, 1996:

- (a) Service credit under the Wichita Employees' Retirement Plans shall be considered Service for purposes of meeting Service eligibility requirements for benefits under the Police and Fire Retirement System Plan C-79;
- (b) Service under the Wichita Employees' Retirement Plans shall not be considered in the determination of the amount of any benefit payable by the Police and Fire Retirement System Plan C-79; and

- (c) Under no circumstances will the total retirement benefit payable to a safety officer as a result of this transfer exceed an amount equal to seventy-five percent (75%) of his or her Final Average Salary regardless whether the source of the benefit is the Wichita Employees' Retirement System or the Police and Fire Retirement System.

#### SECTION 31

##### **Re-employment of Retirees.**

- (a) Any Member under the Retirement System who is receiving a retirement benefit and who is re-employed as a commissioned Police or Fire Officer with the City of Wichita, or in a non-commissioned position under the Wichita Employee's Retirement System, shall have such Member's retirement benefit immediately suspended, and no benefit payments shall be made during the entire time such Member is so employed. However, nothing is intended to prohibit such member from participation in the appropriate retirement system and the accrual of additional Service for credit.
- (b) Upon termination of such employment as a commissioned officer, payment of the retirement benefit shall be resumed; provided, however, nothing herein shall be construed to prohibit the employment of a retired police or fire commissioned officer in an advisory or consultant capacity on an independent contractor basis.
- (c) Under no circumstances will the total retirement benefit payable to a re-employed Member exceed an amount equal to seventy-five percent (75%) of his or her Final Average Salary regardless whether the source of the benefit is the Wichita Employees' Retirement System or the Police and Fire Retirement System.

#### SECTION 32

##### **Fraud.**

Any person who knowingly makes a false statement in connection with the application for or the receipt of benefits, or falsifies or permits to be falsified, any record or records of this Retirement System, in an attempt to defraud the Retirement System, shall forfeit all rights to benefits hereunder. The Retirement System and the City shall have the right to recover by setoff or otherwise, any payments based on such false statement or falsified record.

#### SECTION 33

##### **Limited Extension of Option and its Effective Date.**

Any Police or Fire Officer who had previously elected to participate in Plan B shall have an option at any time prior to retirement to elect participation in Plan A by paying into the Retirement System a sum of money, without interest, equal to the difference in contributions which would have been paid by such Police or Fire Officer had they elected Plan A on January 1, 1965; provided, that once having made such election, such Police or Fire Officer shall not be permitted to revert back to Plan B.

#### SECTION 34

##### **Benefit and Disability Rights Under Prior Laws Saved.**

This ordinance shall not affect the rights nor decrease the Disability or retirement benefits of any Member or such Member's beneficiaries, who has died, been permanently disabled, or retired under any previously authorized and existing pension or retirement system. Any Member in service at the time of the effective date of this ordinance, who is at said time entitled to a benefit under any previously authorized pension or Retirement System shall not have such benefit reduced by virtue of the application of the provisions of this ordinance.

#### SECTION 35

##### **Invalidity of Part.**

If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this ordinance, which can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are declared to be severable.

#### SECTION 36

##### **Compliance with Code Section 415 Limitations on Contributions and Benefits.**

- a) Notwithstanding any other provisions of the Retirement System to the contrary, the Member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of Section 415 of the Internal Revenue Code for a qualified pension plan.
- (b) *Participation in Other Qualified Plans: Aggregation of Limits.*
  - (1) The 415(b) limit with respect to any Member who at any time has been a Member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the Member's employer in this plan shall apply as if the total benefits payable under all such defined

benefit plans in which the Member has been a Member were payable from one (1) plan.

- (2) The 415(c) limit with respect to any Member who at any time has been a Member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue Code maintained by the Member's employer in this plan shall apply as if the total annual additions under all such defined contributions plans in which the Member has been a Member were payable from one (1) plan.

(c) *Basic 415(b) Limitation.*

- (1) Before January 1, 1995, a Member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a Member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the Retirement System. In no event shall a Member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.
- (2) For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(d) *Adjustments to Basic 415(b) Limitation for Form of Benefit.*

If the benefit under the plan is other than the form specified in subsection (c)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

- (1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the



Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(ii)] that takes into account the additional benefits under the form of benefit as follows:

- (2) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply [a monthly benefit], the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced limit applicable at the annuity starting date which is the “lesser of” when adjusted in accordance with the following assumptions):
  - (A) The annual amount of the straight life annuity (if any) payable to the Member under the plan commencing at the same annuity starting date as the form of benefit to the Member, or
  - (B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62);  
or
- (3) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date which is the “least of” when adjusted in accordance with the following assumptions):
  - (A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
  - (B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a

5.5 percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

- (C) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

(e) *Benefits Not Taken into Account for 415(b) Limitation.*

For purposes of this section, the following benefits shall not be taken into account in applying these limits:

- (1) Any ancillary benefit which is not directly related to retirement income benefits;
- (2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;
- (3) Any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

(f) *Other Adjustments in 415(b) Limitation.*

- (1) In the event the Member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement

income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) (as adjusted) annual benefit beginning at age sixty-two (62).

- (2) In the event the Member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for in (1) above shall not apply.
- (3) The reductions provided for in (1) above shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(g) *Ten Thousand Dollar (\$10,000) Limit.*

Notwithstanding the foregoing, the retirement benefit payable with respect to a Member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such Member under this plan and under all other qualified defined benefit pension plans to which the Member's employer contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the Member participated.

(h) *Effect of COLA without a Lump Sum Component on 415(b) Testing.*

Effective on and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code (the "Limit") to a Member with no lump sum benefit, the following will apply:

- (1) a Member's applicable Limit will be applied to the Member's annual benefit in the Member's first limitation year without regard to any cost of living adjustments under Section 25;
- (2) to the extent that the Member's annual benefit equals or exceeds the Limit, the Member will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the Limit; and
- (3) thereafter, in any subsequent limitation year, a Member's annual benefit, including any cost of living increases under Section 25, shall be tested under the then applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

(i) *Effect of COLA with Lump Sum Component on 415(b) Testing.*

On and after January 1, 2009, with respect to a Member who receives a portion of the Member's annual benefit in a lump sum, a Member's applicable Limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

(j) *Section 415(c) Limitations on Contributions and Other Additions.*

After-tax Member contributions or other annual additions with respect to a Member may not exceed the lesser of \$40,000 (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or 100% of the Member's compensation.

- (1) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, Member contributions, and forfeitures credited to a Member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.
- (2) For purposes of applying Section 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that Member contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as compensation.
- (3) Compensation will be defined as wages within the meaning of Section 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be determined without regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code).
  - (A) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal

Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Internal Revenue Code.

- (B) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a Member's severance from employment or the end of the limitation year that includes the date of the Member's severance from employment if:
- (I) the payment is regular compensation for services during the Member's regular working hours, or compensation for services outside the Member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the Member while the Member continued in employment with the employer; or
  - (II) the payment is for unused accrued bona fide sick, vacation or other leave that the Member would have been able to use if employment had continued; or
  - (III) payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the Member at the same time if the Member had continued employment with the employer and only to the extent that the payment is includible in the Member's gross income.

Any payments not described in paragraph (B) above are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to a Member who does not currently perform services for the employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the Member would have received if the Member had continued to perform services for the employer rather than entering qualified military service.

A Member who is in qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the Member would have received during such period if the Member were not in qualified military service, determined based on the rate of pay the Member would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the Member would have received during such period was not reasonably certain, the Member's average compensation from the employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(C) Back pay, within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) For limitation years beginning on or after January 1, 2009, a Member's compensation for purposes of subsection (k) shall not exceed the annual limit under Section 401(a)(17) of the Internal Revenue Code.

(k) *Service Purchases under Section 415(n).*

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a Member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of Section 415(n) of the Internal Revenue Code will be treated as met only if:

- (1) the requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Section 415(b) of the Internal Revenue Code, or
- (2) the requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.
- (3) For purposes of applying this section, the system will not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this subparagraph and will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this section.

- (4) For purposes of this section the term “permissive service credit” means service credit-
  - (A) recognized by the system for purposes of calculating a Member’s benefit under the system,
  - (B) which such Member has not received under the system, and
  - (C) which such Member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (B), may include service credited in order to provide an increased benefit for service credit which a Member is receiving under the system.

- (5) The system will fail to meet the requirements of this section if-
  - (A) more than five years of nonqualified service credit are taken into account for purposes of this subparagraph, or
  - (B) any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under the system.
- (6) For purposes of paragraph (5), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term “nonqualified service credit” means permissive service credit other than that allowed with respect to-
  - (A) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of repayment described in Section 415(k)(3) of the Internal Revenue Code),
  - (B) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (A)) of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of

education, as determined under the applicable law of the jurisdiction in which the service was performed,

- (C) service as an employee of an association of employees who are described in clause (A), or
- (D) military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the system.

In the case of service described in clause (A), (B), or (C), such service will be nonqualified service if recognition of such service would cause a Member to receive a retirement benefit for the same service under more than one plan.

- (7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer)-

- (A) the limitations of paragraph (5) will not apply in determining whether the transfer is for the purchase of permissive service credit, and
- (B) the distribution rules applicable under federal law to the system will apply to such amounts and any benefits attributable to such amounts.

- (8) For an eligible Member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a Plan as in effect on August 5, 1997. For purposes of this paragraph an eligible Member is an individual who first became a Member in the system before January 1, 1998.

(l) *Modifications of Contributions for 415(c) and 415(n) Purposes.*

Notwithstanding any other provision of law to the contrary, the system may modify a request by a Member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:

- (1) If the law requires a lump sum payment for the purchase of service credit, the system may establish a periodic payment plan for the Member



to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.

- (2) If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the system may either reduce the Member's contribution to an amount within the limits of those sections or refuse the Member's contribution.

(m) *Repayments of Cashouts.*

Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the Retirement System shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.

(n) *Reduction of Benefits Priority.*

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the Member's benefit under any defined benefit plans in which the Member participated, such reduction to be made first with respect to the plan in which the Member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the Member participated, such reduction to be made first with respect to the plan in which the Member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such Member.

## SECTION 37

### **Direct Rollovers of Defined Benefit Plan Distributions.**

- (a) Except as otherwise indicated herein, this section shall apply to all rollovers made after December 31, 2001.
- (b) For purposes of compliance with Section 401(a)(31) of the Internal Revenue Code, this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the Board, to

have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

- (1) “Eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee’s designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only (i) to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code; (ii) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or (iii) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code. Effective January 1, 2002, the definition of an eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code.
- (2) “Eligible retirement plan” means any of the following that accepts the distributee’s eligible rollover distribution:

- (A) an individual retirement account described in Section 408(a) of the Internal Revenue Code;
- (B) an individual retirement annuity described in Section 408(b) of the Internal Revenue Code;
- (C) an annuity plan described in Section 403(a) of the Internal Revenue Code;
- (D) a qualified trust described in Section 401(a) of the Internal Revenue Code;
- (E) effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code;
- (F) effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the Retirement System; or
- (G) effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

(3) “Distributee” means an employee or former employee. It also includes the employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an “inherited” individual retirement account or annuity.

(4) “Direct rollover” means a payment by the plan to the eligible retirement plan specified by the distributee.

(c) Rollover contributions and/or direct rollovers of distributions made after December 31, 2001 will be accepted for the purchase of prior or future service credit from the types of plans specified.

- (d) The plan will accept a direct rollover of an eligible rollover distribution from:
  - (1) A qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code.
  - (2) An annuity contract described in Section 403(b) of the Internal Revenue Code.
  - (3) An eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state.
- (e) The plan will accept a participant contribution of an eligible rollover distribution from:
  - (1) A qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code.
  - (2) An annuity contract described in Section 403(b) of the Internal Revenue Code.
  - (3) An eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state.
- (f) The plan will accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in Section 408(a) or 408 (b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income.

#### SECTION 38

The Original of Charter Ordinance No. 205 of the City of Wichita, Kansas, is hereby repealed.

#### SECTION 39

##### **Publication.**

This ordinance shall be published once each week for two (2) consecutive weeks in the official city newspaper.

#### SECTION 40

##### **Petition for Referendum.**

This is a charter ordinance and shall take effect sixty-one (61) days after final publication unless a sufficient petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c)(3), of the Constitution of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

PASSED by the governing body of the City of Wichita, Kansas, this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law